

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTIN HAGOPIAN,

Plaintiff,

CIVIL ACTION NO. 05-CV-74025-DT

vs.

DISTRICT JUDGE GEORGE CARAM STEEH

DAVID SMITH, BUREAU
OF HEALTH CARE SERVICES,
GEORGE PRAMSTALLER, CMS,
INC., LIZ KLEINHARDT, YVONNE
GARDNER BROWN, JANE DOE, and
JOHN DOE,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO SEAL
DOCUMENTS (DOCKET NO. 120), GRANTING DEFENDANTS' MOTION FOR
LEAVE TO FILE AMENDED DISPOSITIVE MOTION (DOCKET NO. 131), AND
GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER TO FILE
DOCUMENTS UNDER SEAL (DOCKET NO. 132)

This matter comes before the Court on three motions. The first is Defendants' Motion to Seal Documents filed on July 1, 2009. (Docket no. 120). The second is Defendants' Motion for Leave to File Amended Dispositive Motion filed on November 25, 2009. (Docket no. 131). The third is Defendants' Motion for Protective Order to File Documents Under Seal filed on November 25, 2009. (Docket no. 132). Plaintiff did not file responses to the Defendants' motions and the time for responding has expired. All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument on the motions pursuant to E.D. Mich. LR 7.1(e). These matters are now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(A).

This is a *pro se* civil rights action filed by a Michigan state prisoner pursuant to 42 U.S.C.

§ 1983. Plaintiff alleges that Defendants failed to provide proper treatment for his diabetic macular retinopathy and macular edema which resulted in his losing sight in his left eye. On July 1, 2009 Defendants Kleinhardt and CMS, Inc. filed a Motion for Summary Judgment in accordance with this Court's scheduling order. (Docket no. 119). Plaintiff has not filed a response to the motion. On November 25, 2009 Defendants filed the instant Motion for Leave to File an Amended Dispositive Motion. (Docket no. 131). Also on November 25, 2009, Defendants filed an Amended Motion to Dismiss and Motion for Summary Judgment. (Docket no. 133). In the instant Motion for Leave, the Defendants move the Court for leave to file the amended dispositive motion, alleging that the Plaintiff has not filed a response to the original Motion for Summary Judgment and therefore will not be prejudiced if they are permitted to file their amended motion. Defendants also assert that the amended motion will clarify the issues before the Court and aid the Court in adjudicating the case.

Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading once as a matter of course twenty-one days after serving its pleading, or if the pleading is one to which a responsive pleading is required, twenty-one days after service of a responsive pleading. An amended pleading may also be filed with leave of the Court. Leave should be freely given when justice so requires. Fed.R.Civ.P. 15(a)(2). No responsive pleading has yet been filed. The Court will therefore grant Defendants' Motion for Leave to File the Amended Dispositive Motion.

In support of their original Motion for Summary Judgment filed on July 1, 2009, Defendants filed copies of Plaintiff's medical records and a transcript of Plaintiff's February 6, 2009 deposition. (Docket no. 119 exhibits A and C). Defendants also filed the instant Motion to Seal Documents. (Docket no. 120). In the instant motion, Defendants ask the Court for an order sealing the Plaintiff's medical records and deposition testimony. A second Motion to Seal was filed by the Defendants

on November 25, 2009 (docket no. 132), after they filed their Amended Motion to Dismiss and Motion for Summary Judgment (docket no. 133). In that motion, Defendants seek a Protective Order to file Plaintiff's medical records under seal. (Docket no. 132).

Federal Rule of Civil Procedure 5.2(d) and E.D. Mich. LR 5.3 authorize the Court to enter an order permitting a filing to be made under seal. Defendants assert in their motions that the documents must be sealed to protect the confidentiality and privacy of the Plaintiff. The record shows that the Plaintiff has received copies of his medical records (docket no. 119 exhibit C), and therefore will not be prejudiced by the sealing. *See Simpson v. Coleman*, No. 07-13125, 2009 WL 2448594, at *3 (E.D. Mich. August 10, 2009) (an imprisoned *pro se* plaintiff has no access to court documents filed under seal). The Court is persuaded that sealing the Plaintiff's medical records and deposition transcript will protect his privacy. The Court will therefore grant the Defendants' Motions to Seal.

IT IS THEREFORE ORDERED that Defendants' Motion for Leave to File an Amended Dispositive Motion (docket no. 131) is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion for Protective Order to File Documents Under Seal (docket no. 132) is **GRANTED**. The original and any copies of Plaintiff's medical records, attached to Defendants' Amended Motion to Dismiss and Motion for Summary Judgment as Exhibit B (docket no. 133), will be filed under seal and not incorporated into the regular record in this case. The medical records will remain under seal until further order of this Court.

IT IS FURTHER ORDERED that the Defendants' Motion to Seal Documents (docket no. 120) is **GRANTED**. The original and any copies of Plaintiff's medical records, attached to Defendants' original Motion for Summary Judgment as Exhibit A (docket no. 119), and the original

and any copies of Plaintiff's deposition testimony, attached to the Defendants' Motion for Summary Judgment as Exhibit C (docket no. 119), will be filed under seal and not incorporated into the regular record in this case.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: December 17, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUN
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Martin Hagopian and Counsel of Record on this date.

Dated:

s/
Case Manager